



**Commissioner of Domestic Taxes v London Distillers (K) Li (Income Tax Appeal E055 of 2023)
[2024] KEHC 13791 (KLR) (Commercial and Tax) (7 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 13791 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E055 OF 2023**

A MABEYA, J

NOVEMBER 7, 2024

BETWEEN

COMMISSIONER OF DOMESTIC TAXES APPELLANT

AND

LONDON DISTILLERS (K) LIMITED RESPONDENT

JUDGMENT

1. This is an appeal against the judgment of the Tax Appeals Tribunal (“the Tribunal”) delivered on 17/3/2023. The appellant adjusted the rates of excise duty pursuant to Kenya Gazette Supplement No 199 dated 2/11/2021. The respondent filed its excise duty returns for the months of February and March, 2022 using the wrong rates and informed the appellant that it was unable to use the new rates as the system could not allow it.
2. The appellant raised an additional assessment of excise duty for the months of January and February, 2022 and directed the respondent to immediately settle the same. The respondent lodged a notice of objection dated 9/4/2022 stating that the Court has stayed the implementation of the legal notice. The appellant made an objection decision on 21/4/2022 and demanded a sum of Kshs. 38,401,648/75.
3. The appellant was dissatisfied by that decision and preferred an appeal to the Tribunal. The Tribunal delivered its judgment on 17/3/2023 partially allowing the appeal.
4. The appellant was aggrieved by that decision and filled this appeal vide a memorandum of appeal dated 9/5/2023. The grounds of the appeal are summarized as follows: -
 - a. That the Tribunal erred in law and fact by wrongly interpreting a court order issued on 19/11/2021 and holding that the status quo stopped the operation of the Legal Notice 217 Of 2021.



- b. That the Tribunal erred in law and in fact in not finding that the status quo orders were issued after the new rates were already in effect.
 - c. That the Tribunal erred in entertaining an appeal when the appellant had not paid the taxes in question.
5. The appellant prayed for the appeal be set aside and the objection decision dated 21/4/2021 for a tax liability, interest and penalties amounting to Kshs.38,401,648.75 be upheld.
 6. The respondent opposed the appeal vide a statement of facts dated 15/8/2024. It contended that, on 19/11/2021 the court issued orders staying the operation of the Legal Notice No. 217 pending the hearing of the consolidated petition nos. E491, 403, E024 of 2021. That this meant that the rates under the said Legal Notice were not operational at the time and could not be imposed on the tax payer. That the appellant disregarded the order and made an additional assessment for the months of January and February, 2022. That this led to the filing of the appeal before the Tribunal which was upheld.
 7. This appeal was canvassed by way of written submissions which I have considered. The appellant submitted that it had applied excise duty on the respondent based on changes made by the Cabinet Secretary through the [Legal Notice No. 217 of 2021](#). This notice took effect on the date it was published, and that the status quo orders issued on 19/11/2021 were in effect at that time.
 8. It was argued that the additional assessments, including penalties and interest, were warranted under sections 38 and 83A of the [Tax Procedures Act](#). Counsel urged that the matter was sub judice, as the High Court was addressing the same issue. That furthermore, the appeal was invalid since the respondent had not settled the undisputed taxes.
 9. For the respondent, it was submitted that the High Court stayed the implementation of the Legal Notice in the consolidated petition no. E491, 403, E024 of 2021. That the time this issue was live before the Tribunal and it therefore acceded to the authority of the High Court. That in the consolidated petitions, the court held that the effective date of the Legal Notice was 20/12/2021 and therefore the status quo orders were to be maintained from 19/11/2021 when they were issued. Counsel submitted that the Tribunal upheld the order of the court and did not interpret the court order as alleged by the appellant.
 10. I have considered the record and the rival submissions. The first ground of appeal tasks the court to establish whether the Tribunal erred in the interpretation of the Court order of 19/11/2021 concerning the status quo order granted on the [Legal Notice No. 217 of 2021](#).
 11. The appellant argued that the excise duty imposed on the respondent took effect upon publication, making the additional assessments, including penalties and interest, justifiable under sections 38 and 83A of the [Tax Procedures Act](#). He contended that by the time the status quo orders were issued, the Legal Notice was already in effect.
 12. In response, the respondent contended that the Legal Notice had been stayed by the court in the consolidated petitions, making those orders binding on the Tribunal. Consequently, the notice could not be enforced against any taxpayer. Additionally, the respondent contended that the Tribunal did not interpret the court order but had only upheld it.
 13. The record shows that the dispute arose from the payment of excise duty for January and February, 2022. [Legal Notice No. 217 of 2021](#), which is at the center of this appeal, increased the duty by introducing new rates following an inflation adjustment of 4.97%. Consequently, the respondent was legally required to adhere to these new rates for the specified months. However, this payment was not made, as the respondent contended that the adjustment of the duty was under dispute before the



- High Court, where stay and status quo orders had been issued. This situation resulted in the increased assessment, which was subsequently escalated to the Tribunal.
14. The Tribunal identified three key issues, one of which was to determine whether the status quo order halted the operation of [Legal Notice No. 217 of 2021](#). The Tribunal held that the status quo order of 19/11/2021 stopped the operation of the [Legal Notice No. 217 of 2021](#) and maintained that the old rates were applicable for the two months.
 15. The appellant does not contest that the Court issued the status quo and stay orders on [Legal Notice No. 218 of 2021](#). The dispute is however, centered on the effect of those orders: whether the orders came into effect after the Notice had become operational, implying that the respondent was obligated to pay excise duty for the two months, or whether the orders indicated that excise duty should be calculated using the old rates.
 16. The Black's Law Dictionary, Butterworth's 9th Edition, defines status quo as a Latin word which means 'the situation as it exists'.
 17. In Republic v National Environment Tribunal, Ex-parte Palm Homes Limited & Another [2013] e KLR, Odunga J (as he then was) held: -

“When a court of law orders or a statute ordains that the status quo be maintained, it is expected that the circumstances as at the time when the order is made or the statute takes effect must be maintained. An order maintaining status quo is meant to preserve the existing state of affairs ... Status quo must therefore be interpreted with respect to existing factual scenario...”
 18. Similarly, Kenya Airline Pilots Association (KALPA) v Co-operative Bank of Kenya Limited & another [2020] e KLR, the purpose of a status quo order was explained as follows: -

“By maintaining the status quo, the court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering nugatory its proposed decision.”
 19. In the present case, the order in question was issued on 19/11/2021. On 15/12/2021, the same court clarified that the status quo orders were effective from 19/11/2021. It is therefore clear that the months in dispute January and February were covered by those orders. The orders of the High Court are binding on the Tribunal. Since the dispute revolved around those orders, the Tribunal could not depart from them. It is not in the purview of the Tribunal to interpret court orders but it has a duty to enforce it.
 20. In this regard, I find that the Tribunal acted properly in upholding what the orders stated. I therefore find no error on the part of the Tribunal. That ground fails.
 21. The second ground of appeal is on the competency of the appeal. It was the appellant's contention that based on sections 51(3)(b) and 52 of the [Tax Procedures Act](#), the respondent was supposed to pay the undisputed taxes before lodging its appeal.
 22. The tribunal found that what was in dispute was the appellant's raising additional taxes. That the respondent had objected to the additional taxes in full. The tribunal further found as a fact that the respondent had not admitted to any taxes being due.



23. I have considered the record, both before the Tribunal and this Court, the appellant did not specify which taxes were due from the respondent and which the respondent should have paid before lodging the appeal. Further, the appellant did not point out the taxes the respondent had admitted and had failed to pay.
24. It should be noted that sections 51(3)(b) and 52 of the [Tax Procedures Act](#) applies to ‘undisputed’ or ‘admitted’ taxes. In the present case, the respondent had not admitted any taxes. It had objected to the additional taxes in full. Indeed, the Tribunal found that the demand from the appellant on the respondent was not on taxes due, but additional taxes.
25. Accordingly, I find that the Tribunal was right in rejecting the appellant’s contention that the respondent’s appeal was invalid. That ground also fails.
26. In view of the foregoing, I find that the appeal is without merit and I dismiss the same with costs.

It is so decreed.

DATED AND DELIVERED AT NAIROBI THIS 7TH DAY OF NOVEMBER, 2024.

A. MABEYA, FCI Arb

JUDGE

